



# Criminal Justice (Scotland) Act 1949

## 1949 CHAPTER 94

### PART I

#### POWERS AND PROCEEDINGS OF COURTS

##### *Powers relating to young offenders*

#### **17 Restriction on sentence of death**

The following subsection shall be substituted for subsection (1) of section fifty-seven of the Children and Young Persons (Scotland) Act, 1937:—

“(1) Sentence of death shall not be pronounced on or recorded against a person convicted of an offence if it appears to the court that at the time when the offence was committed he was under the age of eighteen years; but in lieu thereof the court shall sentence him to be detained during His Majesty's pleasure; and if so sentenced he shall be liable to be detained in such place and under such conditions as the Secretary of State may direct.”

#### **18 Restriction on imprisonment**

- (1) No court shall impose imprisonment on a person under seventeen years of age.
- (2) No court shall impose imprisonment on a person under twenty-one years of age unless the court is of opinion that no other method of dealing with him is appropriate; and for the purpose of determining whether any other method of dealing with any such person is appropriate the court shall obtain from a probation officer or otherwise and consider information about his circumstances, and shall take into account any information before the court which is relevant to his character and his physical and mental condition.
- (3) Where a court of summary jurisdiction other than a sheriff court or a stipendiary magistrate's court imposes imprisonment on any such person as is mentioned in the last foregoing subsection, the court shall state the reason for its opinion that no other

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method of dealing with him is appropriate, and the reason shall be specified in the minutes required to be kept under section fifty-three of the Summary Jurisdiction (Scotland) Act, 1908.

- (4) His Majesty may by Order in Council prohibit courts from sentencing to imprisonment persons under the age of twenty-one years or such lower age as may be specified in the Order, and any such Order may be limited to particular classes of court or to persons of one of the sexes:

Provided that no Order in Council shall be made under this subsection until the Secretary of State is satisfied that the methods, other than imprisonment, available for the treatment of offenders afford to courts adequate means of dealing with the persons to whom the Order relates.

- (5) A draft of any Order in Council under this section shall be laid before Parliament, and the draft shall not be submitted to His Majesty in Council unless each House of Parliament presents an Address to His Majesty praying that the Order be made.

## **19 Detention in a detention centre**

- (1) Where a court has power, or would but for the last foregoing section have power, to impose imprisonment on a person who is not less than fourteen but under twenty-one years of age, the court, if it has been notified by the Secretary of State that a detention centre is available for the reception from that court of persons of his class or description, may in lieu of imposing imprisonment order him to be detained in a detention centre to be specified in the order for a term not exceeding three months:

Provided that if the maximum term of imprisonment which the court might, or might but for the last foregoing section, impose is less than three months, the term for which he is ordered to be detained as aforesaid shall be a term not exceeding, that maximum term of imprisonment.

- (2) A court shall not order a person to be detained in a detention centre—
- (a) if he has been previously sentenced to imprisonment or Borstal training;
  - (b) if he is not less than seventeen years of age, and has previously been ordered to be so detained since attaining that age;

and shall not order any other person to be so detained unless the court has considered every other method (except imprisonment) by which the court might deal with him and is of opinion that none of those methods is appropriate.

- (3) Where a person has been ordered to be detained in a detention centre in default of the payment of any sum of money then, on the payment of the whole or part of that sum, he shall be discharged, or, as the case may be, the term of his detention shall be reduced, in the same manner as if the term were a term of imprisonment.
- (4) A court shall not make an order that an offender who is not less than fourteen years of age be committed to custody in a remand home under section fifty-eight of the Children and Young Persons (Scotland) Act, 1937, if it has been notified by the Secretary of State that a detention centre is available for the reception from that court of persons of his class or description.

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## **20 Borstal training**

- (1) Where a person who is not less than sixteen but under twenty-one years of age is convicted on indictment or is convicted summarily by a sheriff or a stipendiary magistrate of an offence punishable with imprisonment, and the court is satisfied having regard to his character and previous conduct, and to the circumstances of the offence, that it is expedient for his reformation and the prevention of crime that he should undergo a period of training in a Borstal institution, the court may, in lieu of any other sentence, pass a sentence of Borstal training.
- (2) A person sentenced to Borstal training shall be detained in a Borstal institution, and after his release therefrom be subject to supervision, in accordance with the provisions of the Fourth Schedule to this Act.
- (3) Before a sentence of Borstal training is passed the court shall call for and consider a report on the offender's physical and mental condition and his suitability for such a sentence, which report it shall be the duty of the Secretary of State to cause to be furnished to the court.
- (4) If on consideration of a report furnished in pursuance of the last foregoing subsection the court, either *ex proprio motu* or on the application of either party, thinks it expedient to do so, it may require any person concerned in the preparation of the report or with knowledge of matters dealt with in the report to appear with a view to his examination on oath regarding any of the matters dealt with in the report, and such person may be examined or cross-examined accordingly.
- (5) A copy of any report furnished under subsection (3) of this section shall be given by the clerk of the court to the offender or his solicitor at least two clear days before the diet at which the sentence is to be passed.